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Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Summary of the inquiry concerning the Philippines under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

I. Introduction

1. On 2 June 2008, the Committee received a joint submission from three non-governmental organizations[1] requesting it to conduct an inquiry under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women into alleged systematic and grave violations of rights guaranteed under the Convention resulting from the implementation of Executive Order No. 003, issued by the former Mayor of Manila, Jose L. Atienza Jr., on 29 February 2000, which governed the provision of sexual and reproductive health rights, services and commodities in Manila.

2. Under the Local Government Code of 1991, the State party decentralized and delegated responsibility for people's health and safety to the local level. Section 17 provides that the local government units are to be responsible for the provision of basic services and facilities, including health services, family planning services and population development services. Local government units exercise power through their respective legislative bodies, such as the Manila City Council, which enacts legislation by ordinance, while a mayor has the power to issue executive orders. Executive Order No. 003 recalled the sanctity of life and the protection of the life of

Note: The present document is being circulated in English, French and Spanish only.

[1] The Philippines-based Task Force CEDAW Inquiry, the Center for Reproductive Rights and International Women's Rights Action Network Asia-Pacific. The Philippines-based Task Force CEDAW Inquiry consists of 17 non-governmental organizations (EnGendeRights and WomenLEAD (co-convenors); Alternative Law Groups; Democratic Socialist Women of the Philippines; Family Planning Organization of the Philippines; Health Action Information Network; Health and Development Initiatives Institute; Institute for Social Studies and Action, Philippines; Kapisanan ng mga Kamag-anak ng Migranteng Manggagawang Pilipino; Philippine Legislators' Committee on Population and Development Foundation; Population Services, Pilipinas; Sentro ng Alternatibong Lingap Panligal/Alternative Legal Assistance Center; Forum for Family Planning and Development; WomanHealth Philippines; Women's Crisis Center; Women's Legal Bureau; Women's Media Circle Foundation) and national and community-based organizations in the Philippines.

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the mother and the unborn, as enshrined in the Constitution, and declared that the City of Manila would take an "affirmative stand on pro-life issues and responsible parenthood". It also provided that the City would "promote responsible parenthood and uphold natural family planning not just as a method but as a way of self-awareness in promoting the culture of life while discouraging the use of artificial methods of contraception like condoms, pills, intrauterine devices, surgical sterilization, and other".

3. According to the information received by the non-governmental organizations, while the executive order did not expressly prohibit the use of modern contraceptives, its continued implementation in practice severely limited women's access to sexual and reproductive health services and effectively resulted in a ban on modern contraceptives in Manila. The non-governmental organizations further submitted that the executive order continued to be implemented under the subsequent mayor, Alfredo Lim, elected in 2007, who had issued a new executive order (No. 030), which allegedly had imposed a funding ban on modern contraception. On 23 April 2009, 13 July 2010 and 30 April 2012, the non-governmental organizations submitted updated information.

4. At its forty-second session, the Committee examined the information before it and considered it to be reliable and indicative of grave or systematic violations. By a note verbale dated 10 December 2008, the Committee transmitted all the information received to the State party and invited it to cooperate in the examination of that information and, to that end, to submit its observations by 15 March 2009, in accordance with article 8 (1) of the Optional Protocol and rule 83 of its rules of procedure. On 5 November 2009, the State party submitted its observations, based on brief responses of the Manila City Health Office refuting the allegations. At its forty-fifth session, the Committee, on the basis of the information at its disposal, including relevant conclusions of other treaty bodies and special procedures mandate holders, decided to establish a confidential inquiry concerning the accessibility of contraceptives in Manila. At its forty-sixth session, in July 2010, the Committee, pursuant to article 8 (2) of the Optional Protocol and rule 84 of its rules of procedure, designated two members, Pramila Patten and Violeta Neubauer, to conduct a confidential inquiry into the alleged violations. The designated members visited the territory of the State party from 19 to 23 November 2012, after it gave its consent on 2 August.

5. During the visit, the designated members met representatives of the following authorities: the Presidential Human Rights Committee, the Chair and the Director of the Philippine Commission on Women (the national mechanism for gender equality), the Department of Health (representatives of the National Center for Disease Prevention and Control, including the Director of the Family Health Office and representatives of the Family Health Cluster within the Center for Health Development for the National Capital Region), the Department of Foreign Affairs, the Department of Justice, the Department of the Interior and Local Government, the Department of Social Welfare and Development, the Philippine Health Insurance Corporation, the Office of the Court Administrator and the former Secretary of Health and of Social Welfare and Development. They also met the Commission on Human Rights of the Philippines, including its Chair, and representatives of the Philippines Legislators' Committee on Population and Development. At the level of the local government of Manila, the designated members conducted interviews with the Mayor, Alfredo Lim, the City Legal Officer, representatives of the City Health

Office (including the Acting City Health Officer and the Chief of Family Planning) and officials of the City Department of Social Welfare.

6. The designated members visited three health centres and Abad Santos Hospital, a City-run hospital, and interviewed health personnel at various levels, including at the management level. They interviewed representatives of local, national and international civil society organizations, petitioners and counsel in the *Osil* case and lawyers, health policy experts and private health-care providers, in addition to 60 women between 19 and 49 years of age, mainly from poor urban areas. They also conducted field visits to communities in Vitas and Tondo, where they were able to witness extreme poverty among urban households, many of which were headed by women. They also met representatives of United Nations bodies.

II. Findings of fact

7. The Committee notes that, while section 6 of article 2 of the Constitution of 1987 proclaims that "the separation of Church and State shall be inviolable", the church has considerable influence on public policymaking. Religion has been relied upon as the basis for sexual and reproductive health policies, including at the level of local government units, given that, under section 12 of article 2 of the Constitution, the State party is required to "equally protect the life of the mother and the life of the unborn from [the time of] conception".

A. Implementation of Executive Order No. 003

8. The Committee is of the view that, while the wording of Executive Order No. 003 itself does not explicitly prohibit or ban modern contraceptives, the implementation of the policy contained therein resulted in the withdrawal of all supplies of modern contraceptives from all health facilities funded by the local government, in the refusal to provide women with family planning information and counselling other than on so-called "natural family planning" and in misinformation about modern methods of contraception, including those methods listed on the World Health Organization Model List of Essential Medicines. Information showed that the provision of supplies and information and training on modern contraception methods, which used to be available, was suddenly discontinued. Furthermore, all relevant medical personnel were trained and would provide information only on natural family planning methods (e.g. abstinence, cervical mucus, body temperature, calendar and lactational amenorrhea methods). The authorities and medical staff interviewed all confirmed that the instructions issued by Mr. Atienza to that effect continued to be implemented after February 2004.

9. The Committee considers that the information before it regarding the implementation of Executive Order No. 003 as at February 2004 demonstrates the existence of a ban on modern methods of contraception in all public health facilities run by the local government, namely hospitals, health centres and "lying-in clinics". The concept of "responsible parenthood" was promoted and actively advocated by the local government of Manila by excluding women's access to the full range of sexual and reproductive health services, commodities and information, with a damaging impact on women's health and lives. The Committee finds that the "pro-life" position of Mr. Atienza, as reflected in Executive Order No. 003, was a

policy that became well known to the citizens of Manila and to relevant officials, including officials of the central Government. The executive order was condoned and even reinforced by national policies introduced in 2001 with the aim of removing women's access to modern contraceptive methods and promoting natural family planning only, such as the National Natural Family Planning Strategic Plan 2002-2006, which stated that "[natural family planning] is the only method acceptable to the Catholic Church". Furthermore, the Committee notes that the prohibition of emergency contraception and of misoprostol is indicative of the ideological environment prevailing at the time and its retrogressive impact on the provision of reproductive health services and commodities. The Committee notes that the lack of any government response to the implementation of the executive order in Manila from 12 February 2004 to June 2007 resulted from the fact that the policy was in line with the central Government's own position in the area of reproductive health.

10. The Committee further finds that allegations regarding the continued enforcement of the executive order under the subsequent Mayor, Alfredo Lim, who took office on 30 June 2007, was confirmed by information collected during the country visit of the designated members. Interviews with women who had sought modern contraception in health centres and hospitals between 2007 and 2011 revealed that the executive order continued to be enforced in practice, Mr. Lim's declared "pro-choice" policy notwithstanding, based on the principle of freedom to choose the method of contraception. Most of the women interviewed confirmed that the executive order remained in force and that Mr. Lim's policy was "pro-life", thereby demonstrating that no change had been noticed among the most concerned beneficiaries.

B. Adoption and implementation of Executive Order No. 030

11. Mr. Lim adopted Executive Order No. 030 on 21 October 2011, explicitly containing a "pro-choice" policy "allowing couples to exercise full and absolute discretion in deciding on which form of family planning to use conformably with their religious beliefs and practices". While acknowledging the unavailability of reproductive health services and commodities in the health facilities run by the City of Manila and the shortcomings of the health system in Manila, and recognizing that women from the lowest income groups were adversely affected by the lack of access to services and information on the "full range of methods for limiting the spacing of pregnancy", the executive order provided that the City was "not [to] disburse and appropriate funds or finance any program or purchase materials, medicines for artificial birth control".

12. While the local government of Manila portrayed it as a positive measure that included provisions that allowed the City to receive donations of contraceptives from the Department of Health and from non-governmental organizations, the Committee finds that Executive Order No. 030 did not address the flaws and weaknesses of the health system as a whole that had resulted from the implementation of Executive Order No. 003. The Committee considers that the "pro-choice" policy was not accompanied by the means necessary to make those choices available and affordable. Therefore, even if women were de jure entitled to choose between "modern" or "natural" family planning, in practice that choice was not made possible, in the absence of available commodities, adequate information

and training of health-care personnel. The Committee therefore finds that the health system actually failed to provide women with such choices. The adoption of Executive Order No. 030 was thus an inadequate response, given that it did not allow public funding for the provision of the full range of reproductive health services and commodities to women in Manila, nor did it provide for reinvestment in infrastructure and for the capacity-building necessary to provide those services. To fill the gaps created by the executive orders, the local government placed the burden on non-governmental organizations, donors and other third parties to restore the provision of reproductive health services and commodities which, under the Local Government Code, had initially been delegated to local government units because of their proximity to the beneficiaries.

13. The Committee finds that the continued implementation of Executive Order No. 003 under Messrs. Atienza and Lim, followed by the issuance and implementation of Executive Order No. 030 under Mr. Lim, had detrimental consequences for economically disadvantaged women and drove them further into poverty by depriving them of an opportunity to control the number and spacing of their children. The numerous testimonies received by the designated members during their interviews with 60 affected women revealed the pervasive impact of the consecutive implementation of the executive orders on the lives and health of women in Manila, in particular the economic, social, physical and psychological consequences for women from low-income groups. Women also described extensively the difficulties that they experienced in using natural family planning methods, which many times contributed to tension and conflicts with their husbands or partners and fostered domestic violence. The Committee further notes the damage caused to the women's mental and physical health resulting from multiple pregnancies and their increased exposure to HIV/AIDS and other sexually transmitted diseases.

C. Measures taken by the State party and shortcomings

14. The Magna Carta of Women, which incorporates key principles of the Convention into national law, was adopted in August 2009 and contains a section focusing on women's right to health. Section 46 specifies that any existing legislation conflicting with the content of the Magna Carta, whether national or local, will be deemed repealed, modified or amended. Although the Magna Carta establishes an operational legal framework that also covers reproductive health, the Committee notes that the lack of implementation of this framework is apparent. The absence of a national law on reproductive health has also contributed to such lack of implementation.

15. Although the delivery of health services is the responsibility of local government units, the Department of Health issued several policies in the area of reproductive health. In particular, it issued Administrative Order 2008-0029 on implementing health reforms for the rapid reduction of maternal and neonatal mortality (also known as the Maternal, Newborn, Child Health and Nutrition Strategy) to ensure the rapid reduction of maternal and child mortality. It provides that comprehensive reforms should be undertaken at the local government unit level to enhance the provision of the maternal, newborn, child health and nutrition core package of services, consisting of interventions to be delivered for each life stage, such as pre-pregnancy, pregnancy, delivery and the post-partum and newborn

periods. Pre-pregnancy interventions specifically include the provision of family planning services, in particular modern family planning, as a means of reducing unmet needs and unwanted pregnancies that expose mothers to unnecessary risks resulting from pregnancy and childbirth. A grant facility was established in 2009 to support local government units in implementing the Maternal, Newborn, Child Health and Nutrition Strategy and guidelines were adopted in 2010. The performance-based grants are allocated and supervised by the Department of Health, which takes into account the contraceptive prevalence rate. Information showed that Manila consistently underperformed in the domains assessed with regard to reproductive health.

16. The Committee considers that the efforts of the Department of Health/Center for Health Development in assisting the local government of Manila in the provision of comprehensive sexual and reproductive health services, including modern methods of contraception, were insufficient. A review of the documents provided by the State party and the information provided by stakeholders reveals clearly that no mechanism or system was established by the central Government to monitor the compliance of local government unit policies with national policies and to monitor their implementation at the local government unit level. As such, it is apparent that the compliance of the executive orders with the Maternal, Newborn, Child Health and Nutrition Strategy was not examined by any relevant government agency. Furthermore, noting section 25 (c) of the Local Government Code, which provides that any local government units experiencing financial problems are to call upon national agencies to provide financial assistance, the Committee finds that the local government of Manila took insufficient measures to comply with that provision.

17. The Committee considers that the lack of proactive action by and authority of all relevant government agencies, in addition to serious lapses in the implementation of the newly established frameworks, in particular the Magna Carta and the Maternal, Newborn, Child Health and Nutrition Strategy, and delays in enacting national legislation on reproductive health, are factors that have resulted in the insufficient and unsatisfactory response of the State party to the situation in Manila.

18. The Committee notes that, in 2012, the local government of Manila made a noticeable shift in its approach and in the implementation of the new reproductive health strategy in Manila with a view to ensuring access to affordable reproductive health services that included modern methods of contraception. The Committee notes that, pursuant to a request by the City Health Office through the regional office to the Department of Health on 21 June 2012, within the Grant Facility, to reprogramme the remaining available funds to modern family planning, contraceptives and information material were made available in some health centres in Manila as from September and October 2012. The Committee stresses, however, that it was not provided with information regarding the sustainability of the measures taken, in addition to the requirements for the local government to ensure the continued and adequate supply of commodities.

19. Efforts were also made at the central level with the adoption of policies and programmes to reduce unmet need for modern contraception, notably Administrative Order No. 2012-0009 of 27 June 2012 on the new national strategy towards reducing unmet need for modern family planning. After having been pending before Congress for more than a decade, the Responsible Parenthood and Reproductive Health Act of 2012 (Republic Act 10354) was approved by Congress

and later signed into law by the President on 21 December 2012. Motions challenging its constitutionality were filed before the Supreme Court, pursuant to which its implementation was postponed. It is a matter of great concern to the Committee that the implementation of the Act has been postponed since March 2013, following judicial action, and that such action may, regrettably, result in a lengthier postponement of the implementation of the Act or in its partial or even total repeal, in contravention of the State party's obligations under the Convention, in particular under article 12. The Committee believes that the Act is an essential tool in addressing the visible shortcomings of the current decentralization system and the detrimental effects on women's access to sexual and reproductive health rights and services in Manila.

D. *Osil* case

20. Twenty petitioners from Manila repeatedly sought to challenge the constitutionality of Executive Order No. 003 and sought redress before the Court of Appeals, the Supreme Court and the Regional Trial Court between 2008 and 2012 (the *Osil* case). All attempts were unsuccessful and inconclusive. For example, the Regional Trial Court ruled on a motion to dismiss filed by the Office of the Mayor on 31 October 2012, two weeks before the visit of the designated members, but nearly three years after the motion had been filed. It has still not granted relief to the petitioners. A request by the designated members notwithstanding, no updated information has been received regarding the current status of the case.

III. Legal findings

A. Accountability: State party's responsibility

21. Under international law of State responsibility, all acts of State organs are attributable to the State.[2] Furthermore, the accountability of States parties for the implementation of their obligations under the Convention is engaged through the acts or omissions of all branches of government (see general recommendation No. 28, para. 39). The Committee therefore recalls that the actions of a mayor, his or her office and all other municipal officers, in their official capacity, are attributable to the State party, given that they are State organs and that the State party is responsible for ensuring compliance with the standards of the Convention by all its organs, including local governments, to which powers have been devolved.

[2] Paragraph 4 of general comment No. 31 of the Human Rights Committee states that "all branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level — national, regional or local — are in a position to engage the responsibility of the State Party". The International Law Commission, in article 4 of its articles on responsibility of States for internationally wrongful acts, states that "the conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State". It goes on to say that "an organ includes any person or entity which has that status in accordance with the internal law of the State". In its commentary, the Commission has clarified that mayors have been held to be State organs because they are carrying out public functions or exercising public power.

22. The Committee therefore observes that the acts and omissions of the executive power of the local government of Manila, namely the issuance and implementation of Executive Orders Nos. 003 and 030 and associated policies, are attributable to the State party, notwithstanding the autonomy awarded to local government units by the Local Government Code, which governs the constitutional structure of the State party.[3]

23. The Committee stresses that, even in the context of such a decentralized system as the State party's, the responsibility for the implementation of the Convention lies with the State party as a whole. Decentralization of power through devolution in no way negates or reduces the direct responsibility of the State party to fulfil its obligation to respect and ensure the rights of all women within its jurisdiction. In this respect, the Committee recalls its general recommendation No. 28, in which it clearly sets out States parties' obligations in the context of decentralization and devolution of powers:

> 39. ... The decentralization of power, through devolution and delegation of Government powers in both unitary and federal States, does not in any way negate or reduce the direct responsibility of the State party's national or federal Government to fulfil its obligations to all women within its jurisdiction. In all circumstances, the State party that ratified or acceded to the Convention remains responsible for ensuring full implementation throughout the territories under its jurisdiction. In any process of devolution, States parties have to make sure that the devolved authorities have the necessary financial, human and other resources to effectively and fully implement the obligations of the State party under the Convention. The Governments of States parties must retain powers to require such full compliance with the Convention and must establish permanent coordination and monitoring mechanisms to ensure that the Convention is respected and applied to all women within their jurisdiction without discrimination. Furthermore, there must be safeguards to ensure that decentralization or devolution does not lead to discrimination with regard to the enjoyment of rights by women in different regions.
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> 40. Effective implementation of the Convention requires that a State party be accountable to its citizens and other members of its community at both the national and international levels. In order for this accountability function to work effectively, appropriate mechanisms and institutions must be put in place.[4]

24. The Committee notes that the Local Government Code contains specific safeguards and provides that the accountability of local government units is to be ensured through the establishment of effective monitoring mechanisms. According to section 25, the supervisory powers over highly urbanized cities such as Manila, a city independent from the province, lie with the President, as opposed to other cities

[3] Section 2 of the Local Government Code states that "the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources".

[4] See also the technical guidance on the application of a human rights-based approach to the implementation of policies and programmes to reduce preventable maternal morbidity and mortality (A/HRC/21/22), para. 23: "Where the health system is decentralized, the national Government remains accountable for complying with human rights obligations, including those relating to sexual and reproductive health".

that are under the supervision of governors (sect. 29). The Committee also notes that, under section 3, operative principles of decentralization should be established in every local government unit in order to meet the priority needs and service requirements of its communities. The Committee finds, however, that such safeguards and oversight mechanisms, as required by the State party's national law, have not been sufficiently established to ensure that decentralization and devolution of powers to the local level in the health sector does not lead to discrimination with regard to the enjoyment of rights under the Convention by women in Manila.

25. The Committee underlines that, in the context of decentralization and in the absence of a national law mandating local government units to ensure comprehensive reproductive health rights, services and commodities, the need for strict safeguards to uphold the State party's obligations under the Convention was even more significant.

26. The Committee finds that the State party has failed to address the effects of the implementation of Executive Orders Nos. 003 and 030 and that, between 2004 and 2010, at times either supported or condoned the policies of the City of Manila. In those circumstances, the Committee finds that the State party bears responsibility for the violations set out below.

B. Violations of the rights under the Convention

1. Articles 2 (d), 2 (f) and 12

27. The Committee recalls that it is stated in paragraph 9 of general recommendation No. 28 that, "under article 2, States parties must address all aspects of their legal obligations under the Convention to respect, protect and fulfil women's right to non-discrimination and to the enjoyment of equality". It is further stressed that "the obligation to respect requires that States parties refrain from making laws, policies, regulations, programmes, administrative procedures and institutional structures that directly or indirectly result in the denial of the equal enjoyment by women of their civil, political, economic, social and cultural rights". It is emphasized in paragraph 35 of the general recommendation that article 2 (d) establishes an obligation of States parties to abstain from engaging in any act or practice of direct or indirect discrimination against women and that States parties must ensure that State institutions, agents, laws and policies do not directly or explicitly discriminate against women and that laws, policies or actions that have the effect or result of generating discrimination are abolished.

28. The Committee recalls the tacit acceptance by the central Government of the policies of the local government and its failure to take any action against the local public authorities, as from February 2004. It also notes that, even though the local government failed to comply with national policies developed as from 2008 in the field of sexual and reproductive health rights and services (Maternal, Newborn, Child Health and Nutrition Strategy and Grant Facility), the central Government took insufficient and inadequate measures to address the flaws of the Manila health system, as described in the factual findings. The Committee further notes the lack of a comprehensive review of the regulations in place, although required by the Magna Carta when it was enacted in 2009. The Committee recalls that the information before it demonstrates the adverse effects of the implementation of Executive Order No. 003 and of the lack of resources allocated under Executive Order No. 030 for

women's sexual and reproductive health rights in Manila, especially among economically disadvantaged women. The Committee also recalls that the effects were duly brought to the attention of the State party.

29. The Committee underlines the concluding observations of the Human Rights Committee, in which it urged the State party to lift Executive Order No. 030 insofar as it prohibited the disbursement of funds for the purchase of materials and medicines for artificial birth control (CCPR/C/PHL/CO/4, para. 13).

30. The Committee further observes that the strict application of the State party's criminal legislation has further intensified the harmful effects of the executive orders, as shown by the numerous testimonies of women and health personnel during the visit of the designated members.

31. In its general recommendation No. 24, the Committee underlines the responsibility of States parties to ensure that legislation and executive action and policy comply with their obligations under article 12 of the Convention to eliminate discrimination against women in their access to health-care services, in particular in the areas of sexual and reproductive health. The Committee recalls that, in accordance with international law of State responsibility, the obligation under article 2 (d) of the Convention is binding on all organs of a State party at all levels of government.[5] The adoption and implementation of Executive Orders Nos. 003 and 030 by the local government of Manila are therefore attributable to the State party, which failed to ensure that the local government would refrain from engaging in any act or practice of discrimination against women, as required by article 2 (d), and to take all measures necessary, in accordance with article 2 (f), to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against women.

2. Articles 12 and 10 (h)

32. The Committee recalls paragraph 11 of its general recommendation No. 24, according to which it is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women. The Committee further underlines, in paragraph 12 of the general recommendation, that distinctive health features that differ for women in comparison to men include biological factors such as women's reproductive functions.[6] Given that such factors have a bearing on women's reproductive health needs, the Committee considers that substantive equality requires that States parties attend to the risk factors that predominantly affect women. Given that only women can become pregnant, lack of access to contraceptives is therefore bound to affect their health disproportionately. The Committee finds that women in Manila primarily bore the consequences of and were disproportionately disadvantaged by the inability to gain access to and use the full range of reproductive health services, including modern methods of contraception.

33. The Committee recalls its factual findings regarding the consequences of the implementation of Executive Orders Nos. 003 and 030 on women and observes that such implementation over many years had a severe impact on their health and on

[5] See general recommendation No. 28, para. 39, and general comment No. 31 of the Human Rights Committee, para. 4.

[6] See also communication No. 17/2008, *Pimentel v. Brazil*, views adopted on 25 July 2011, para. 7.6.

their access to adequate health-care services. The Committee observes that the lives and health of many women were put at risk, given that they were compelled to have more children than they wanted or than their health permitted them to have. The Committee particularly takes note of the potentially life-threatening consequences of unplanned and/or unwanted pregnancies as a direct consequence of the denial of access to the full range of contraceptive methods, as well as of the strict criminalization of abortion without any exemptions provided for in the State party's legislation. Complications resulting from unsafe and illegal abortions are a prominent cause of maternal death in Manila, as acknowledged by the State party. It is therefore evident for the Committee that the failure of the State party to provide the full range of sexual and reproductive health services, commodities and information resulted in unplanned pregnancies, unsafe abortions and unnecessary and preventable maternal deaths.

34. The Committee finds that Executive Order No. 003 effectively resulted in a systematic denial of affordable access to modern methods of contraception and related information and services. This ban particularly harmed disadvantaged groups of women, including poor women, adolescent girls and women in abusive relationships. For example, adolescent girls were exposed to an increased risk of unwanted pregnancies and pregnancy-related injuries or death following unprotected or coerced sex, to which they are particularly vulnerable. Furthermore, the inability of women with little or no income to control their fertility is directly linked to high poverty levels in Manila. The Committee notes that the impact of Executive Order No. 003 was compounded by the funding ban contained in Executive Order No. 030. The Committee finds that the State party failed to eliminate economic and social barriers to reproductive health services so that all women, irrespective of their age and income level, would have equal access to affordable services responding to their specific health needs. The Committee also stresses that the lack of access to modern methods of contraception has resulted in an increasing exposure of women to HIV/AIDS and other sexually transmitted diseases.

35. Recalling that access to sexual and reproductive health services presupposes the availability and affordability of adequate and sustainable services and commodities, the Committee concludes that the State party has failed to take appropriate and effective measures to ensure access to sexual and reproductive health services and commodities for women in Manila. The programmes and policies developed by the State party at the national level, in particular the Maternal, Newborn, Child Health and Nutrition Strategy and Grant Facility, albeit commendable, have been insufficient to address the shortcomings and failures of the local government. Furthermore, the Committee rejects the State party's explanations regarding cost considerations to justify the issuance of Executive Order No. 030, which has resulted in the impairment of women's health.

36. The Committee concludes that the State party has failed to ensure access to the full range of sexual and reproductive health services and commodities, including information and counselling on modern methods of family planning, in violation of article 12 of the Convention. It also considers that the State party has failed to remove barriers to ensure women's effective access to sexual and reproductive health services, pursuant to paragraph 21 of general recommendation No. 24. The Committee finds that such failure amounts to discrimination and to a violation of article 12.

37. Furthermore, the Committee recalls paragraph 22 of its general recommendation No. 21, in which it is stressed that, "in order to make an informed decision about safe and reliable contraceptive measures, women must have information about contraceptive measures and their use, and guaranteed access to sex education and family planning services, as provided in article 10 (h) of the Convention". The Committee considers that women have a "right protected by article 10 (h) to be provided with appropriate information and advice on family planning through the hospital personnel"[7] in order to enable them to make fully informed choices regarding their reproductive health.

38. The Committee recalls that women in Manila, especially young women and teenage girls, have not had access to adequate information about modern methods of contraception as a result of the implementation of Executive Orders Nos. 003 and 030 and/or have been consistently misinformed about the risks, side effects and benefits of modern contraception. The Committee finds that women's practical access to reproductive health services was therefore compromised by their lack of knowledge or awareness for informed decision-making, such as information on the legal permissibility of being provided with modern contraceptives in public health facilities, their effectiveness, their risks and their benefits. The Committee also finds that many women in Manila have been making their choices on the basis of misinformation received, for example on the adverse effects of oral contraception or of ligation procedures.

39. The Committee concludes that the failure to provide information about modern contraceptive methods and their use also violates article 10 (h) of the Convention, which requires States parties to provide access to health-related education, including information and advice on family planning.

3. Article 16 (1) (e)

40. In paragraph 21 of its general recommendation No. 21, the Committee recalled that the number and spacing of their children had an impact on women's lives and also affected their physical and mental health, as well as that of their children and that, for those reasons, women were entitled to decide on the number and spacing of their children. The Committee further observed, in paragraph 23, that "there is general agreement that where there are freely available appropriate measures for the voluntary regulation of fertility, the health, development and well-being of all members of the family improves" and that "such services improve the general quality of life and health of the population, and the voluntary regulation of population growth helps preserve the environment and achieve sustainable economic and social development".

41. The Committee considers that, through the policies of the local government of Manila and their implementation, the State party has undermined the right of women to decide freely and responsibly on the number and spacing of their children, by advocating and providing only natural methods of family planning. Women in Manila were denied access to information and services relating to modern methods of contraception, thus depriving them of their ability and autonomy to make fundamental and intimate decisions affecting their bodies and lives in an informed and safe manner. The rights of women to family planning and to exercise

[7] See communication No. 4/2004, *A. S. v. Hungary*, views adopted on 14 August 2006, para. 11.2.

their choice and independence in making decisions with regard to the number and spacing of their children were thereby rendered futile and their denial exacerbated inequalities between men and women in marriage and family relations. The Committee thus finds that the State party failed to provide education, services and the means necessary to fulfil its obligations under article 16 (1) (e).

4. Articles 5 and 12

42. The Committee considers that article 5, read together with articles 12 and 16, requires States parties to eliminate gender stereotypes that impede equality in the health sector and in marriage and family relations. In paragraph 28 of its general recommendation No. 24, the Committee recognizes the link between article 5 (b) and article 12, in that it requires States parties to ensure that family education includes a proper understanding of maternity as a social function. The Committee is of the view that gender stereotypes may affect women's capacity to make free and informed decisions and choices about their health care, sexuality and reproduction and, in turn, also affect their autonomy to determine their own roles in society.

43. Thus, the Committee finds that the implementation of Executive Orders Nos. 003 and 030 with regard to the delivery of reproductive health services and commodities in Manila reinforced gender stereotypes prejudicial to women, given that they incorporated and conveyed stereotyped images of women's primary role as child bearers and child rearers, thereby perpetuating discriminatory stereotypes already prevalent in Filipino society. Such stereotypes further contributed to the belief that it was acceptable to deny women access to modern methods of contraception because of their natural role as mothers and had the effect of impairing the enjoyment by women of their rights under article 12 of the Convention. The Committee concludes that the State party has violated its obligations under article 5 of the Convention.

5. Articles 2 (c) and 12

44. The Committee notes that the court action, which was initially filed before the Court of Appeals on 29 January 2008, refiled before the Supreme Court on 29 September 2008 and finally brought before the Regional Trial Court on 20 April 2009 by 20 petitioners to challenge Executive Order No. 003 (*Osil*), was still pending before the last-mentioned instance at the time of the adoption of the report. The Committee recalls that the Court of Appeals took three months to adjudicate the matter, instead of the 24 hours prescribed by the rules of civil procedure, and dismissed the petition without a hearing on the merits on the ground of failure to submit tax declarations. It notes further that, on 6 October 2008, the Supreme Court failed to rule on the merits of the case regarding the 19 petitioners who had signed the petition and on 15 December 2008 also dismissed a motion for reconsideration of the case. The Committee further notes that the petition brought before the Regional Trial Court on 20 April 2009 remains pending and that the Court has taken more than three years to rule on a motion by the Office of Mayor to dismiss the petition. In the circumstances, the Committee concludes that the judicial process has been unduly delayed, thereby undermining the effectiveness of available remedies.

45. The Committee stresses that, according to paragraph 33 of general recommendation No. 28, States parties must "ensure that courts are bound to apply the principle of equality as embodied in the Convention and to interpret the law, to

the maximum extent possible, in line with the obligations of States parties under the Convention". According to paragraph 34, States parties are required "to ensure that women have recourse to affordable, accessible and timely remedies ... to be settled in a fair hearing by a competent and independent court or tribunal, where appropriate". The Committee recalls that the undertakings under article 2 (c) of the Convention are stringent obligations of result. It follows that the State party has failed to put in place a system to ensure effective judicial protection and to provide effective judicial remedies for human rights violations experienced by women in Manila as a result of Executive Order No. 003, as evidenced by the failure and unwillingness of the judiciary to adjudicate without undue delay the *Osil* case concerning the revocation of the disputed executive order. In such circumstances, the Committee considers that the State party failed to comply with its obligations under article 2 (c) of the Convention to ensure effective judicial action and protection.[8]

C. Grave or systematic nature of the violations

46. Within the meaning of article 8 of the Optional Protocol to the Convention and rule 83 of the rules of procedure, the violations by a State party of the rights set forth under the Convention must be grave or systematic. In the light of the information received and obtained before, during and immediately after the visit of the designated members and recalling that the provisions mentioned below should be read together with general recommendations Nos. 21, 24 and 28, the Committee finds that the State party has failed to fulfil its obligations under the Convention and is thereby responsible for the following violations, which it considers to be both grave and systematic:

(a) The violations of the rights under article 12, read alone;

(b) The violations of the rights under article 12, read in conjunction with articles 2 (c), (d) and (f), 5 and 10 (h);

(c) The violations of the rights under article 16 (1) (e), read alone.

47. The Committee's determination regarding the gravity of the violations takes into account, notably, the scale, prevalence, nature and impact of the violations found. The number of persons affected by the policies set out in the executive orders is significantly high, given that thousands of women of childbearing age continue to have inadequate access to sexual and reproductive health services in Manila, bearing in mind that teenage girls begin having children at a young age. The implementation of Executive Orders Nos. 003 and 030 has led to higher rates of unwanted pregnancies and unsafe abortions, increased maternal morbidity and mortality and increased exposure to sexually transmitted diseases and HIV. The Committee also takes note of the potentially life-threatening consequences of resorting to unsafe abortion as a method of contraception and recalls that there is a direct link between high maternal mortality rates resulting from unsafe abortion and lack of access to modern methods of contraception. In addition, the Committee stresses that each of the violations established reaches the required threshold of

[8] According to paragraph 13 of general recommendation No. 24, referring to women's rights to health care, failure to put in place a system that ensures effective judicial action will constitute a violation of article 12.

gravity given the significant consequences, as detailed in the findings, for women's health, personal development and economic security, in particular for economically disadvantaged women. The denial of access to affordable sexual and reproductive health services, including the full range of methods of contraception, had severe consequences for the lives and health of many women and also affected their enjoyment of several rights set forth in the Convention in areas such as employment and education. By limiting women's rights to freely choose the number and spacing of their children, women and girls were effectively undermined in gaining access to and pursuing the same education and employment opportunities as enjoyed by men and thereby driven further into or maintained in poverty.

48. The Committee considers that the systematic denial of equal rights for women can take place either deliberately, namely with the State party's intent of committing those acts, or as a result of discriminatory laws or policies, with or without such purpose. The systematic nature of violations can also be assessed in the light of the presence of a significant and persistent pattern of acts that do not result from a random occurrence. The Committee holds the view that the systematic character of each of the violations found is evident from the prevalent pattern of violations that occurred as a result of policies disproportionately affecting women and discriminating against them. The Committee takes note that, while the lack of access to contraception is generally problematic throughout the State party, the situation in Manila is particularly egregious as a result of an official and deliberate policy that places a certain ideology above the well-being of women and that was designed and implemented by the local government to deny access to the full range of modern contraceptive methods, information and services. The Committee believes that the violations are not isolated cases, given that the continued implementation of Executive Order No. 003 over a decade resulted in the health system's incapacity to deliver sexual and reproductive health services other than so-called "natural family planning" and caused women to continuously face significant barriers to gaining access to affordable sexual and reproductive health services, commodities and information. The above factual findings demonstrate that the State party condoned a situation that lasted for more than 12 years, during the successive terms of two different mayors.

IV. Recommendations

49. In accordance with its jurisprudence and its general recommendation No. 24, the Committee recalls that the practical realization of substantive equality requires accommodating the specific, distinct health needs and interests of women, including those relating to their fertility, and entails respecting, protecting and fulfilling[9] women's reproductive rights by providing them with universal access to a full range of contraceptives and related information, in addition to counselling and services.

50. In the light of the findings set out herein and in line with relevant recommendations addressed to the State party by other United Nations bodies, the

[9] See, in particular, paragraph 37 of general recommendation No. 24: "The duty of States parties to ensure, on a basis of equality between men and women, access to health care services, information and education implies an obligation to respect, protect and fulfil women's rights to health care" and "States parties have the responsibility to ensure that legislation and executive action and policy comply with these three obligations".

Committee refers to its previous concluding observations and its general recommendations Nos. 21, 24 and 28, and makes a number of recommendations to the State party.

A. Institutional and legal framework

51. The Committee calls upon the State party:

(a) **To fully enforce the Magna Carta of Women and its implementing rules and regulations that guarantee, among other things, women's access to effective methods of family planning;**

(b) **Upon the disposal of the constitutional challenges before the Supreme Court, and if declared constitutional, to ensure the immediate implementation of the Reproductive Health Act and its implementing rules and regulations, including provisions that guarantee universal access to the full range of reproductive health services and information for women, especially for economically disadvantaged women, to ensure that the decentralization of health services and autonomy of local government units do not constitute barriers to the implementation of the new legal framework and to establish mechanisms at all levels of government to ensure its strict enforcement throughout the territory of the State party;**

(c) **To complete, without delay and within a fixed time frame, the review of remaining discriminatory laws and/or regulations in the field of reproductive health, as required by the Magna Carta, and to modify or repeal such provisions where necessary;**

(d) **To ensure that Executive Orders Nos. 003 and 030 are officially revoked, as a matter of urgency, and that health-care providers and the general public, in particular women, are timely and duly informed of such revocation;**

(e) **To amend articles 256 to 259 of its Criminal Code to legalize abortion in cases of rape, incest, threats to the life and/or health of the mother or serious malformation of the foetus and to decriminalize all other cases in which women undergo abortion, as well as to adopt the procedural rules necessary to guarantee effective access to legal abortion;**

(f) **To reinforce the existing national machinery, i.e. the Commission on Women, by strengthening its mandate, authority and visibility, in addition to its human, financial and technical resources, to monitor compliance by local governments with international standards and national laws concerning the provision of reproductive health services; to consider decentralizing its activity by establishing regional offices; and to enhance its coordination with the Department of Health, the Department of the Interior and Local Government and the Commission on Human Rights in the area of reproductive health;**

(g) **In line with its duty under the provisions of the Magna Carta on the promotion and protection of women's rights, to consider broadening the mandate of the Commission on Human Rights to allow it to receive complaints and to provide remedies in cases of violations of, in particular, women's reproductive rights; to provide the Commission with adequate financial, human and technical resources to ensure that it can effectively discharge its**

current and additional functions; and to take all measures necessary to ensure its full financial autonomy;

(h) In the light of the decentralization of health services to local government units, to establish effective monitoring and oversight mechanisms, as provided for in the Local Government Code, to ensure that reproductive health-related legislation, strategies and policies adopted and implemented by such units strictly comply with the State party's obligations under the Convention and that they are based on scientific evidence and do not discriminate against women in practice, and to ensure the availability, accessibility and affordability of reproductive health services and commodities at all levels of government, throughout the territory of the State party;

(i) To strengthen existing coordination and reporting mechanisms between the Department of Health, its regional health centres and the health departments of local government units to ensure the implementation of national strategies and policies relating to sexual and reproductive health;

(j) To ensure that local government units put in place effective legal remedies for women seeking redress for violations of their right of access to sexual and reproductive health services; to ensure that the courts adjudicate cases involving women's sexual and reproductive health rights without undue delay; and to remove the barriers that women are facing in gaining access to justice;

(k) To ensure that the Convention, the Committee's general recommendations, the Optional Protocol and the views of the Committee under the Optional Protocol be made an integral part of the education and training of judges, lawyers and prosecutors at the national, regional and municipal levels, with a view to ensuring the effective application of women's health rights, including relevant provisions of the Magna Carta and the Reproductive Health Act;

(l) In line with its Constitution providing for the separation of the church and the State, to ensure that State policies and legislation give priority to the protection of women's health rights, in particular their sexual and reproductive health rights, over any religious postulates that may lead to de facto or de jure discrimination against women and negatively affect their access to sexual and reproductive health services, commodities and information, including by designing strategies to raise the awareness of parliamentarians, government officials, political parties and the executive and legislative branches of local governments, with a view to eliminating all ideological barriers limiting women's access to sexual reproductive health services, commodities and information.

B. Sexual and reproductive health rights and services

52. The Committee urges that the State party:

(a) Address the unmet need for contraception, especially in Manila, with a particular focus on economically disadvantaged women and adolescent girls, by ensuring universal and affordable access to the full range of sexual and reproductive health services, commodities and related information, which must

include the availability of the safest and most technologically advanced methods of contraception, including oral contraception and emergency contraception, intrauterine devices and ligation services, and adequate provision in national and local government budgets for a sufficient supply of such contraceptive methods in all public health facilities, with a particular focus on local government units with low contraceptive prevalence rates; take all measures necessary to remove all economic and structural barriers that result in unequal access to sexual and reproductive health services, including limitations pertaining to women's marital status, age and number of children; and consider expanding the public health insurance system to cover the costs of modern contraceptive methods;

(b) Ensure that non-biased, scientifically sound and rights-based counselling and information on sexual and reproductive health services, including on all methods of contraception, are provided in all governmental, provincial and municipal health facilities in the State party to address rampant misinformation and to ensure that women can make informed decisions about the number and spacing of their children and do not have to resort to unsafe abortions;

(c) Reintroduce emergency contraception in the State party, in particular to prevent early and unplanned pregnancies and in cases of sexual violence, as well as promote and raise awareness about the benefits of emergency contraceptives in such situations, in particular among adolescent girls;

(d) Ensure that systematic training on sexual and reproductive health rights, services and commodities is provided to health-care professionals in all public hospitals, health centres and lying-in clinics, as well as to community health teams, especially in Manila, with a view to addressing the loss of institutional capacity and knowledge and the erosion of skills resulting from the enforcement of Executive Orders Nos. 003 and 030; and monitor the adequate allocation of funding by local government units for such systematic training to ensure that it is commensurate with their needs;

(e) Provide women with access to high-quality post-abortion care in all public health facilities, especially in case of complications resulting from unsafe abortions, including by reintroducing misoprostol, in order to reduce maternal mortality and morbidity rates; ensure that women experiencing abortion-related complications are not reported to the law enforcement authorities, threatened with arrest or subjected to physical or verbal abuse, discrimination, stigma or delays in access to or denial of care; adopt a patient privacy policy to ensure doctor-patient confidentiality, specifically when treating women for abortion-related complications; ensure effective reporting procedures, available for women in need of post-abortion care to complain about abuse and discrimination, without fear of retaliation; and conduct research on the incidence of unsafe abortions in the State party and their impact on women's health and maternal mortality and morbidity, and make such information available to the Committee in its next periodic report;

(f) Establish a regulatory framework and mechanism for the practice of conscientious objection by individual health professionals in order to ensure that such individual practice does not influence women's decision-making in

relation to their sexual and reproductive health and/or impede their access to sexual and reproductive health services, and ensure the provision of adequate sexual and reproductive health services by alternative medical health personnel;

(g) Ensure that local government units establish health-care protocols and hospital procedures to prevent and sanction abuse of and discrimination against women, in addition to complaint mechanisms within the decentralized health-care systems, such as specialized investigation and appeal procedures or female health ombudspersons, to investigate complaints and impose appropriate sanctions on health-care professionals responsible for abuse of and discrimination against female patients;

(h) Integrate age-appropriate education on sexual and reproductive health into school curricula, including comprehensive sex education, for adolescent girls and boys, covering prevention of early pregnancies and sexually transmitted diseases, including HIV/AIDS;

(i) Conduct education and awareness-raising campaigns to enhance the awareness of women and adolescent girls of sexual and reproductive health rights and services, especially on the use and the lawfulness of modern contraceptive methods in the State party, and on the risks relating to unsafe abortion, with such campaigns also addressing health-related misconceptions about modern methods of contraception, in addition to gender-based stereotypes discouraging the use of modern contraceptive methods;

(j) Continue to seek technical support from the international community, in addition to financial aid where relevant, and strengthen its collaboration with and provision of support to civil society organizations, including women's organizations, in order to enhance women's access to sexual and reproductive health services, commodities and information, including by fostering national consultation on such issues.